State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0508/2
CMH:wlj:rs

DOA:.....Skwarczek, BB0135 - Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ..., **relating to:** the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. If WERC determines, after investigation, that an impasse exists and that arbitration is required, WERC must submit to the parties a list of seven arbitrators, from which the parties alternately strike names until one arbitrator is left. As an alternative to a single arbitrator, WERC may provide for an arbitration panel that consists of one person selected by each party and one person selected by WERC. As a further alternative, WERC may provide a process that allows for a random selection of a single arbitrator from a list of seven names submitted by WERC. Under current law, an arbitrator or arbitration panel must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

However, under current law, this process does not apply to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that

the employer has submitted a qualified economic offer (QEO). Under current law, a QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. "Fringe benefit savings" is that amount, if any, by which 1.7 percent of the total compensation and fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees.

This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Under current law, school district professional employees must be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

Finally, the bill eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.70 (1) (b) of the statutes is amended to read:

111.70 **(1)** (b) "Collective bargaining unit" means ~~a~~ the unit ~~consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees~~ that is determined by the commission to be appropriate for the purpose of collective bargaining.

SECTION 2. 111.70 (1) (dm) of the statutes is repealed.

SECTION 3. 111.70 (1) (fm) of the statutes is repealed.

SECTION 4. 111.70 (1) (nc) of the statutes is repealed.

SECTION 5. 111.70 (4) (cm) 5. of the statutes is amended to read:

111.70 **(4)** (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the other impasse resolution procedures provided in this paragraph, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement under this subchapter. A copy of such agreement shall be filed by the parties with the commission. If the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under ~~subds. 7., 7g. and~~ subd. 7r.

SECTION 6. 111.70 (4) (cm) 5s. of the statutes is repealed.

SECTION 7. 111.70 (4) (cm) 6. a. of the statutes is amended to read:

111.70 **(4)** (cm) 6. a. If in any collective bargaining unit a dispute relating to one or more issues, ~~qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3. and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate compulsory, final and binding arbitration, as provided in this paragraph. At the time the petition is filed, the petitioning party shall submit in writing to the other party and the commission its preliminary final offer containing its latest proposals on all issues in dispute. Within 14 calendar days after the date of that submission, the other party shall submit in writing its preliminary final offer

on all disputed issues to the petitioning party and the commission. If a petition is filed jointly, both parties shall exchange their preliminary final offers in writing and submit copies to the commission at the time the petition is filed.

SECTION 8. 111.70 (4) (cm) 6. am. of the statutes is amended to read:

111.70 **(4)** (cm) 6. am. Upon receipt of a petition to initiate arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering arbitration. The validity of any arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing to the commission its single final offer containing its final proposals on all issues in dispute that are subject to interest arbitration under this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s. applies~~. If a party fails to submit a single, ultimate final offer, the commission shall close the investigation based on the last written position of the party. ~~The municipal employer may not submit a qualified economic offer under subd. 5s. after the close of the investigation.~~ Such final offers may include only mandatory subjects of bargaining, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that arbitration should

be commenced, shall issue an order requiring arbitration and immediately submit to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as arbitrator. The petitioning party shall notify the commission in writing of the identity of the arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the arbitrator and submit to him or her the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single arbitrator and upon request of both parties, the commission shall appoint a tripartite arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. An arbitration panel has the same powers and duties as provided in this section for any other appointed arbitrator, and all arbitration decisions by such panel shall be determined by majority vote. In lieu of selection of the arbitrator by the parties and upon request of both parties, the commission shall establish a procedure for randomly selecting names of arbitrators. Under the procedure, the commission shall submit a list of 7 arbitrators to the parties. Each party shall strike one name from the list. From the remaining 5 names, the commission shall randomly appoint an arbitrator. Unless both parties to an arbitration proceeding otherwise agree in writing, every individual whose name is submitted by the commission for appointment as an arbitrator shall be a resident of this state at the time of submission and every individual who is designated as an arbitration panel chairperson shall be a resident of this state at the time of designation.

SECTION 9. 111.70 (4) (cm) 7. of the statutes is ~~renumbered~~ repeal & recreate 111.70 (4) (cm) 7r. am. and ~~amended to read:~~

111.70 **(4)** (cm) 7r. am. ~~'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any~~ Any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

SECTION 10. 111.70 (4) (cm) 7g. of the statutes is ~~renumbered 111.70 (4) (cm) 7r. ar. and amended to read:~~

111.70 **(4)** (cm) 7r. ar. ~~'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic~~ Economic conditions in the jurisdiction of the municipal employer ~~than to any of the factors specified in subd. 7r.~~

SECTION 11. 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

111.70 **(4)** (cm) 7r. '~~Other factors~~ Factors considered.' (intro.) In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall ~~also~~ give weight to the following factors:

SECTION 12. 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated, renumbered 111.70 (4) (cm) 8m. and amended to read:

111.70 **(4)** (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for the initial collective bargaining agreement between the parties ~~and~~, except as the parties otherwise agree, every collective bargaining agreement covering municipal employees subject to this paragraph ~~other than school district professional~~

~~employees~~ shall be for a term of 2 years. ~~No~~, but in no case may a collective bargaining agreement for any collective bargaining unit consisting of municipal employees ~~subject to this paragraph other than school district professional employees shall~~ be for a term exceeding 3 years. ~~c.~~ No arbitration award may contain a provision for reopening of negotiations during the term of a collective bargaining agreement, unless both parties agree to such a provision. The requirement for agreement by both parties does not apply to a provision for reopening of negotiations with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation.

SECTION 13. 111.70 (4) (cm) 8m. b. of the statutes is repealed.

SECTION 14. 111.70 (4) (cm) 8p. of the statutes is repealed.

SECTION 15. 111.70 (4) (cm) 8s. of the statutes is repealed.

SECTION 16. 111.70 (4) (cn) of the statutes is repealed.

SECTION 17. 111.70 (4) (d) 2. a. of the statutes is amended to read:

111.70 **(4)** (d) 2. a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a collective bargaining unit. Before making its determination, the commission may provide an opportunity for the municipal employees concerned to determine, by secret ballot, whether ~~or not~~ they desire to be

established as a separate collective bargaining unit. ~~The commission shall not decide, however, that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both municipal employees who are school district professional employees and municipal employees who are not school district professional employees.~~ The commission shall not decide, however, that any ~~other~~ group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both craft employees and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. The commission shall place the professional employees who are assigned to perform any services at a charter school, as defined in s. 115.001 (1), in a separate collective bargaining unit from a unit that includes any other professional employees whenever at least 30% of those professional employees request an election to be held to determine that issue and a majority of the professional employees at the charter school who cast votes in the election decide to be represented in a separate collective bargaining unit. Any vote taken under this subsection shall be by secret ballot.

SECTION 18. 118.245 of the statutes is repealed.

SECTION 9316. Initial applicability; Employment Relations Commission.

(1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (b), (dm), (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r., 8m. a., b., and c., 8p., and 8s., (cn), and (d) 2. a. of the statutes first applies to petitions for arbitration that relate

to collective bargaining agreements that cover periods beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.

(END)

Insert A

Under the Municipal Employment Relations Act (MERA), municipal employers, which include school districts, ~~are required to~~ must bargain collectively with respect to wages, hours, and conditions of employment. Under this bill, school districts ~~are required to~~ must bargain collectively also with respect to a professional or instructional policy if a labor organization shows that the policy is likely to affect the quality of educational programs offered by the school district. Also, under MERA, a school district is prohibited from bargaining collectively with respect to the reassignment of an employee as a result of the school board's decision to operate or contract for the operation of a school as a charter school or to close or reopen a school due to performance or with respect to a school board's decision to contract with a nonsectarian school or agency to provide certain educational programs. Under this bill, only a school district that is not in a first class city is prohibited from bargaining on these subjects.

Current law provides that, in reaching a decision, the arbitrator must give weight to many factors, including the lawful authority of the municipal employer; the stipulations of the parties; the interest and welfare of the public; the financial ability of the unit of government to meet the costs of the proposed agreement; comparison of wages, hours, and conditions of employment with those of other public and private sector employees; the cost of living; the overall compensation and benefits that the employees currently receive; and other similar factors. But, under current law, the arbitrator ~~is required to~~ must give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer. This bill eliminates the authorization for the arbitrator to give any weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer.

Insert 2-1

SECTION ~~1.~~ 111.70 (1) (a) of the statutes is amended to read:

111.70 **(1)** (a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to

wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4) (m), (mb), and (mc) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit and except as provided in sub. (4) (n). In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

Insert 5-24

SECTION 2. 111.70 (4) (cm) 6. a. of the statutes is amended to read:

111.70 **(4)** (cm) 6. a. If in any collective bargaining unit a dispute relating to one or more issues~~, qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable

period of negotiation and after mediation by the commission under subd. 3. and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over ~~wages, hours and conditions of employment~~ any mandatory subject of collective bargaining to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate compulsory, final and binding arbitration, as provided in this paragraph. At the time the petition is filed, the petitioning party shall submit in writing to the other party and the commission its preliminary final offer containing its latest proposals on all issues in dispute. If a party is a school district or a collective bargaining unit consisting of ~~any~~ school district professional employees a final offer may consist of multiple final offers if multiple issues are in dispute. Within 14 calendar days after the date of that submission, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party and the commission. If a petition is filed jointly, both parties shall exchange their preliminary final offers in writing and submit copies to the commission at the time the petition is filed.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

SECTION 3. 111.70 (4) (cm) 6. am. of the statutes is amended to read:

111.70 **(4)** (cm) 6. am. Upon receipt of a petition to initiate arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering arbitration. The validity of any arbitration award or collective bargaining agreement shall not be affected by

failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing to the commission its ~~single~~ final offer containing its final proposals on all issues in dispute that are subject to interest arbitration under this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s. applies~~. A final offer for each party that is not a school district or a collective bargaining unit consisting of any school district professional employees must consist of a single final offer, and a final offer for each party that is a school district or a collective bargaining unit consisting of any school district professional employees may consist of multiple final offers, if multiple issues that are subject to interest arbitration under this subdivision are in dispute. If a party fails to submit ~~a single, ultimate~~ its final offer, the commission shall close the investigation based on the last written position of the party. ~~The municipal employer may not submit a qualified economic offer under subd. 5s. after the close of the investigation.~~ Such final offers may include only mandatory subjects of bargaining, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that arbitration should be commenced, shall issue an order requiring arbitration and immediately submit to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as arbitrator. The petitioning party shall notify the commission in writing of the identity of the arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the arbitrator and submit to him or her

the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single arbitrator and upon request of both parties, the commission shall appoint a tripartite arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. An arbitration panel has the same powers and duties as provided in this section for any other appointed arbitrator, and all arbitration decisions by such panel shall be determined by majority vote. In lieu of selection of the arbitrator by the parties and upon request of both parties, the commission shall establish a procedure for randomly selecting names of arbitrators. Under the procedure, the commission shall submit a list of 7 arbitrators to the parties. Each party shall strike one name from the list. From the remaining 5 names, the commission shall randomly appoint an arbitrator. Unless both parties to an arbitration proceeding otherwise agree in writing, every individual whose name is submitted by the commission for appointment as an arbitrator shall be a resident of this state at the time of submission and every individual who is designated as an arbitration panel chairperson shall be a resident of this state at the time of designation.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

Insert 8-20

SECTION 4. 111.70 (4) (m) (intro.) of the statutes is amended to read:

111.70 **(4)** (m) *Prohibited subjects of bargaining; school district municipal employers in cities that are not 1st class cities.* (intro.) In a school district that is not

in a 1st class city, the municipal employer is prohibited from bargaining collectively with respect to:

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

SECTION 5. 111.70 (4) (m) 6. of the statutes is renumbered 111.70 (4) (mb) and amended to read:

111.70 **(4)** (mb) *Prohibited subjects of bargaining; school district municipal employers.* ~~Solicitation~~ In a school district, the municipal employer is prohibited from bargaining collectively with respect to the solicitation of sealed bids for the provision of group health care benefits for school district professional employees as provided in s. 120.12 (24).

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

SECTION 6. 111.70 (4) (n) of the statutes is created to read:

111.70 **(4)** (n) *Mandatory subjects of bargaining; school district municipal employers.* In a school district, the municipal employer shall bargain collectively with respect to a professional or instructional policy if a labor organization demonstrates that the professional or instructional policy is likely to affect the quality of educational programs offered by the municipal employer.

Hanaman, Cathlene

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, January 13, 2009 4:00 PM
To: Hanaman, Cathlene
Subject: RE: LRB Draft: 09-0508/1 Repeal QEO

Ok, so the intent is to allow multiple school districts (districts within a county or contiguous districts if it makes more sense to draft it that way) to come together for the purposes of bargaining. All districts would still maintain their respective bargaining agents, etc. but they would all bargain for one final agreement that would apply to all the districts involved. The Wisconsin Employment Relations Commission should be authorized to promulgate rules to handle any issues that may arise along the way.

Does this make sense? Is it possible to draft this?

Thank you!

From: Hanaman, Cathlene [mailto:Cathlene.Hanaman@legis.wisconsin.gov]
Sent: Monday, January 12, 2009 4:22 PM
To: Skwarczek, Marta A - DOA
Subject: RE: LRB Draft: 09-0508/1 Repeal QEO

I am confused by the second instruction. Are you allowing school district units to combine? And then the school district with more than 500 employees are exempt from what subsection?

I am a bit slow today, sorry

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]
Sent: Monday, January 12, 2009 11:03 AM
To: Duchek, Michael
Cc: Hanaman, Cathlene
Subject: RE: LRB Draft: 09-0508/1 Repeal QEO

Please make the following changes to the 'Repeal QEO' draft:

- Eliminate revenue limits and local economic conditions entirely as factors to be considered in bargaining (delete s. 111.70(4)(cm)7 and s. 111.70(4)(cm)7g).

- Include the following change: 'Bargaining units consisting of school district employees employed by one or more school districts within a county shall be presumptively valid. For purposes of this section, the county where the district office is located shall be used. School districts with more than 500 employees are exempt from this subsection.'

- Include the impact on wages, hours, and conditions of employment resulting from the reassignment of an MPS employee as a potential subject of bargaining (currently prohibited under s. 111.70(4)(m)1, s. 111.70(4)(m)2, and s. 111.70(4)(m)4).

- Add a new section entitled 'mandatory subjects of bargaining' that states, 'In a school district, in addition to any subject of bargaining on which the municipal employer is required to bargain under s. 111.70(1)(a) and including the impact on the establishment of educational policies affecting wages, hours, and conditions of employment, the municipal employer is required to bargain collectively with respect to the establishment of any professional or instructional policy upon a showing by the labor organization that the policy is likely to affect the quality of educational programs offered by the municipal employer.'

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0508/3
CMH:wlj:ph

DOA:.....Skwarczek, BB0135 – Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. An arbitrator must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

This process does not apply, however, to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). A QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and

fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees. This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Under the Municipal Employment Relations Act (MERA), municipal employers, which include school districts, must bargain collectively with respect to wages, hours, and conditions of employment. Under this bill, school districts must bargain collectively also with respect to a professional or instructional policy if a labor organization shows that the policy is likely to affect the quality of educational programs offered by the school district. Also, under MERA, a school district is prohibited from bargaining collectively with respect to the reassignment of an employee as a result of a school board's decision to operate or contract for the operation of a school as a charter school or to close or reopen a school due to performance or with respect to a school board's decision to contract with a nonsectarian school or agency to provide certain educational programs. Under this bill, only a school district that is not in a first class city is prohibited from bargaining on these subjects.

Current law provides that, in reaching a decision, the arbitrator must give weight to many factors, including the lawful authority of the municipal employer; the stipulations of the parties; the interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed agreement; comparison of wages, hours, and conditions of employment with those of other public and private sector employees; the cost of living; the overall compensation and benefits that the employees currently receive; and other similar factors. But, under current law, the arbitrator must give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer. This bill eliminates the authorization for the arbitrator to give any weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer.

Under current law, school district professional employees must be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

Finally, the bill eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.70 (1) (a) of the statutes is amended to read:

111.70 **(1)** (a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4) (m), (mb), and (mc) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit and except as provided in sub. (4) (n). In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

SECTION 2. 111.70 (1) (b) of the statutes is amended to read:

111.70 **(1)** (b) "Collective bargaining unit" means ~~a~~ the unit ~~consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees~~ that is determined by the commission to be appropriate for the purpose of collective bargaining.

SECTION 3. 111.70 (1) (dm) of the statutes is repealed.

SECTION 4. 111.70 (1) (fm) of the statutes is repealed.

SECTION 5. 111.70 (1) (nc) of the statutes is repealed.

SECTION 6. 111.70 (4) (cm) 5. of the statutes is amended to read:

111.70 **(4)** (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the other impasse resolution procedures provided in this paragraph, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement under this subchapter. A copy of such agreement shall be filed by the parties with the commission. If the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under ~~subds. 7., 7g. and~~ subd. 7r.

SECTION 7. 111.70 (4) (cm) 5s. of the statutes is repealed.

SECTION 8. 111.70 (4) (cm) 6. a. of the statutes is amended to read:

111.70 **(4)** (cm) 6. a. If in any collective bargaining unit a dispute relating to one or more issues~~, qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3. and other settlement procedures, if any, established by the parties have been exhausted, and

the parties are deadlocked with respect to any dispute between them over ~~wages, hours and conditions of employment~~ any mandatory subject of collective bargaining to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate compulsory, final and binding arbitration, as provided in this paragraph. At the time the petition is filed, the petitioning party shall submit in writing to the other party and the commission its preliminary final offer containing its latest proposals on all issues in dispute. If a party is a school district or a collective bargaining unit consisting of school district professional employees a final offer may consist of multiple final offers if multiple issues are in dispute. Within 14 calendar days after the date of that submission, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party and the commission. If a petition is filed jointly, both parties shall exchange their preliminary final offers in writing and submit copies to the commission at the time the petition is filed.

SECTION 9. 111.70 (4) (cm) 6. am. of the statutes is amended to read:

111.70 **(4)** (cm) 6. am. Upon receipt of a petition to initiate arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering arbitration. The validity of any arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing to the commission its ~~single~~ final offer containing its final proposals on all issues in dispute that are subject to interest arbitration under

this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s. applies~~. A final offer for each party that is not a school district or a collective bargaining unit consisting of school district professional employees must consist of a single final offer, and a final offer for each party that is a school district or a collective bargaining unit consisting of school district professional employees may consist of multiple final offers if multiple issues that are subject to interest arbitration under this subdivision are in dispute. If a party fails to submit ~~a single, ultimate~~ its final offer, the commission shall close the investigation based on the last written position of the party. ~~The municipal employer may not submit a qualified economic offer under subd. 5s. after the close of the investigation.~~ Such final offers may include only mandatory subjects of bargaining, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that arbitration should be commenced, shall issue an order requiring arbitration and immediately submit to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as arbitrator. The petitioning party shall notify the commission in writing of the identity of the arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the arbitrator and submit to him or her the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single arbitrator and upon request of both parties, the commission shall appoint a tripartite arbitration panel

consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. An arbitration panel has the same powers and duties as provided in this section for any other appointed arbitrator, and all arbitration decisions by such panel shall be determined by majority vote. In lieu of selection of the arbitrator by the parties and upon request of both parties, the commission shall establish a procedure for randomly selecting names of arbitrators. Under the procedure, the commission shall submit a list of 7 arbitrators to the parties. Each party shall strike one name from the list. From the remaining 5 names, the commission shall randomly appoint an arbitrator. Unless both parties to an arbitration proceeding otherwise agree in writing, every individual whose name is submitted by the commission for appointment as an arbitrator shall be a resident of this state at the time of submission and every individual who is designated as an arbitration panel chairperson shall be a resident of this state at the time of designation.

SECTION 10. 111.70 (4) (cm) 7. of the statutes is repealed.

SECTION 11. 111.70 (4) (cm) 7g. of the statutes is repealed.

SECTION 12. 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

111.70 **(4)** (cm) 7r. '~~Other factors~~ Factors considered.' (intro.) In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall ~~also~~ give weight to the following factors:

SECTION 13. 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated, renumbered 111.70 (4) (cm) 8m. and amended to read:

111.70 **(4)** (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, every collective bargaining agreement covering municipal

employees subject to this paragraph ~~other than school district professional employees~~ shall be for a term of 2 years. ~~No,~~ but in no case may a collective bargaining agreement for any collective bargaining unit consisting of municipal employees ~~subject to this paragraph other than school district professional employees shall~~ be for a term exceeding 3 years. ~~c.~~ No arbitration award may contain a provision for reopening of negotiations during the term of a collective bargaining agreement, unless both parties agree to such a provision. The requirement for agreement by both parties does not apply to a provision for reopening of negotiations with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation.

SECTION 14. 111.70 (4) (cm) 8m. b. of the statutes is repealed.

SECTION 15. 111.70 (4) (cm) 8p. of the statutes is repealed.

SECTION 16. 111.70 (4) (cm) 8s. of the statutes is repealed.

SECTION 17. 111.70 (4) (cn) of the statutes is repealed.

SECTION 18. 111.70 (4) (d) 2. a. of the statutes is amended to read:

111.70 **(4)** (d) 2. a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal ~~work force~~ workforce. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a collective bargaining unit. Before making its determination, the commission may provide an opportunity for the municipal

Insert 9-19

Upon the expiration of any collective bargaining agreement in force, the commission shall combine into a single collective bargaining unit 2 or more collective bargaining units consisting of school district professional employees, with each collective bargaining unit maintaining its representative, if a majority of the employees voting in the a collective bargaining unit vote to combine.

Insert 9-21

****NOTE: Do you want language permitting the withdrawal of units, upon the expiration of a cba, if a majority of the unit wants to withdraw?

employees concerned to determine, by secret ballot, whether ~~or not~~ they desire to be established as a separate collective bargaining unit. ~~The commission shall not decide, however, that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both municipal employees who are school district professional employees and municipal employees who are not school district professional employees.~~ The commission shall not decide, however, that any ~~other~~ group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both craft employees and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. The commission shall place the professional employees who are assigned to perform any services at a charter school, as defined in s. 115.001 (1), in a separate collective bargaining unit from a unit that includes any other professional employees whenever at least 30% of those professional employees request an election to be held to determine that issue and a majority of the professional employees at the charter school who cast votes in the election decide to be represented in a separate collective bargaining unit. Any vote taken under this subsection shall be by secret ballot.

SECTION 19. 111.70 (4) (m) (intro.) of the statutes is amended to read:

111.70 **(4)** (m) *Prohibited subjects of bargaining; school district municipal employers in cities that are not 1st class cities.* (intro.) In a school district that is not in a 1st class city, the municipal employer is prohibited from bargaining collectively with respect to:

SECTION 20. 111.70 (4) (m) 6. of the statutes is renumbered 111.70 (4) (mb) and amended to read:

111.70 **(4)** (mb) *Prohibited subjects of bargaining; school district municipal employers.* ~~Solicitation~~ In a school district, the municipal employer is prohibited from bargaining collectively with respect to the solicitation of sealed bids for the provision of group health care benefits for school district professional employees as provided in s. 120.12 (24).

SECTION 21. 111.70 (4) (n) of the statutes is created to read:

111.70 **(4)** (n) *Mandatory subjects of bargaining; school district municipal employers.* In a school district, the municipal employer shall bargain collectively with respect to a professional or instructional policy if a labor organization demonstrates that the professional or instructional policy is likely to affect the quality of educational programs offered by the municipal employer.

SECTION 22. 118.245 of the statutes is repealed.

SECTION 9316. Initial applicability; Employment Relations Commission.

(1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (a), (b), (dm), (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r., 8m. a., b., and c., 8p., and 8s., (cn), (d) 2. a., (m) (intro.) and 6., and (n) of the statutes first applies to petitions for arbitration that relate to collective bargaining agreements that cover periods beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.

(END)

Hanaman, Cathlene

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Monday, January 19, 2009 10:51 AM
To: Hanaman, Cathlene
Subject: LRB Draft: 09-0508/4 Repeal QEO REVISED

My apologies, one more change, in UPPERCASE.

Please draft a /5 'repeal QEO' that includes only the following changes to current law (this should be a combination of several of the versions already drafted):

1. Repeal the QEO (Eliminate the requirement that school district professional employees be placed in a separate collective bargaining unit from other district employees, increase the allowable length of teacher contracts to 3 years, as is already permitted for other municipal employees, etc.)

2. Eliminate revenue limits and local economic conditions entirely as factors to be considered in arbitration. (and, hence, do not weight any factors more than others)

3. Allow bargaining units to consist of 2 or more collective bargaining units consisting of school district professional employees. ONLY SCHOOL DISTRICTS WITH FEWER THAN 500 EMPLOYEES MAY ENTER INTO COMBINED COLLECTIVE BARGAINING UNITS OF 2 OR MORE SCHOOL DISTRICTS.

I think and hope that this will be the last version.

Thanks.

From: Skwarczek, Marta A - DOA
Sent: Sunday, January 18, 2009 9:57 PM
To: Hanaman, Cathlene - LEGIS
Subject: RE: LRB Draft: 09-0508/4 Repeal QEO

Please draft a /5 'repeal QEO' that includes only the following changes to current law (this should be a combination of several of the versions already drafted):

1. Repeal the QEO (Eliminate the requirement that school district professional employees be placed in a separate collective bargaining unit frmo other district employees, increase the allowable length of teacher contracts to 3 years, as is already permitted for other municipal employees, etc.)

2. Eliminate revenue limits and local economic conditions entirely as factors to be considered in arbitration. (and, hence, do not weight any factors more than others)

3. Allow bargaining units to consist of 2 or more collective bargaining units consisting of school district professional employees.

I think and hope that this will be the last version.

Thanks.

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]
Sent: Thursday, January 15, 2009 2:50 PM
To: Skwarczek, Marta A - DOA
Cc: Hanle, Bob - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0508/4 Repeal QEO

Following is the PDF version of draft 09-0508/4.

State of Wisconsin
2009 - 2010 LEGISLATURE

5

LRB-0508/4

CMH:wlj:rs

Stays

d-note

DOA:.....Skwarczek, BB0135 - Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. An arbitrator must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

This process does not apply, however, to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). A QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and

fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees. This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Under the Municipal Employment Relations Act (MERA), municipal employers, which include school districts, must bargain collectively with respect to wages, hours, and conditions of employment. Under this bill, school districts must bargain collectively also with respect to a professional or instructional policy if a labor organization shows that the policy is likely to affect the quality of educational programs offered by the school district. Also, under MERA, a school district is prohibited from bargaining collectively with respect to the reassignment of an employee as a result of a school board's decision to operate or contract for the operation of a school as a charter school or to close or reopen a school due to performance or with respect to a school board's decision to contract with a nonsectarian school or agency to provide certain educational programs. Under this bill, only a school district that is not in a first class city is prohibited from bargaining on these subjects.

Current law provides that, in reaching a decision, the arbitrator must give weight to many factors, including the lawful authority of the municipal employer; the stipulations of the parties; the interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed agreement; comparison of wages, hours, and conditions of employment with those of other public and private sector employees; the cost of living; the overall compensation and benefits that the employees currently receive; and other similar factors. But, under current law, the arbitrator must give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer. This bill eliminates the authorization for the arbitrator to give any weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer.

Under current law, school district professional employees must be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

Finally, the bill eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.70 (1) (a) of the statutes is amended to read:

111.70 **(1)** (a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4) (m), (mb), and (mc) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit and except as provided in sub. (4) (n). In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

SECTION 2. 111.70 (1) (b) of the statutes is amended to read:

(cs) NOTE: This provision cites a cross-reference that should have been added last budget.

111.70 **(1)** (b) "Collective bargaining unit" means ~~a~~ the unit ~~consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees~~ that is determined by the commission to be appropriate for the purpose of collective bargaining.

SECTION 3. 111.70 (1) (dm) of the statutes is repealed.

SECTION 4. 111.70 (1) (fm) of the statutes is repealed.

SECTION 5. 111.70 (1) (nc) of the statutes is repealed.

SECTION 6. 111.70 (4) (cm) 5. of the statutes is amended to read:

111.70 **(4)** (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the other impasse resolution procedures provided in this paragraph, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employees or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement under this subchapter. A copy of such agreement shall be filed by the parties with the commission. If the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under ~~subds. 7., 7g. and~~ subd. 7r.

SECTION 7. 111.70 (4) (cm) 5s. of the statutes is repealed.

SECTION 8. 111.70 (4) (cm) 6. a. of the statutes is amended to read:

111.70 **(4)** (cm) 6. a. If in any collective bargaining unit a dispute relating to one or more issues~~, qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3. and other settlement procedures, if any, established by the parties have been exhausted, and

the parties are deadlocked with respect to any dispute between them over ~~wages, hours and conditions of employment~~ any mandatory subject of collective bargaining to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate compulsory, final and binding arbitration, as provided in this paragraph. At the time the petition is filed, the petitioning party shall submit in writing to the other party and the commission its preliminary final offer containing its latest proposals on all issues in dispute. If a party is a school district or a collective bargaining unit consisting of school district professional employees a final offer may consist of multiple final offers if multiple issues are in dispute. Within 14 calendar days after the date of that submission, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party and the commission. If a petition is filed jointly, both parties shall exchange their preliminary final offers in writing and submit copies to the commission at the time the petition is filed.

SECTION 9. 111.70 (4) (cm) 6. am. of the statutes is amended to read:

111.70 **(4)** (cm) 6. am. Upon receipt of a petition to initiate arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering arbitration. The validity of any arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing to the commission its ~~single~~ final offer containing its final proposals on all issues in dispute that are subject to interest arbitration under

this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s. applies.~~ A final offer for each party that is not a school district or a collective bargaining unit consisting of school district professional employees must consist of a single final offer, and a final offer for each party that is a school district or a collective bargaining unit consisting of school district professional employees may consist of multiple final offers if multiple issues that are subject to interest arbitration under this subdivision are in dispute. If a party fails to submit ~~a single, ultimate~~ its final offer, the commission shall close the investigation based on the last written position of the party. ~~The municipal employer may not submit a qualified economic offer under subd. 5s. after the close of the investigation.~~ Such final offers may include only mandatory subjects of bargaining, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that arbitration should be commenced, shall issue an order requiring arbitration and immediately submit to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as arbitrator. The petitioning party shall notify the commission in writing of the identity of the arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the arbitrator and submit to him or her the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single arbitrator and upon request of both parties, the commission shall appoint a tripartite arbitration panel

consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. An arbitration panel has the same powers and duties as provided in this section for any other appointed arbitrator, and all arbitration decisions by such panel shall be determined by majority vote. In lieu of selection of the arbitrator by the parties and upon request of both parties, the commission shall establish a procedure for randomly selecting names of arbitrators. Under the procedure, the commission shall submit a list of 7 arbitrators to the parties. Each party shall strike one name from the list. From the remaining 5 names, the commission shall randomly appoint an arbitrator. Unless both parties to an arbitration proceeding otherwise agree in writing, every individual whose name is submitted by the commission for appointment as an arbitrator shall be a resident of this state at the time of submission and every individual who is designated as an arbitration panel chairperson shall be a resident of this state at the time of designation.

SECTION 10. 111.70 (4) (cm) 7. of the statutes is repealed.

SECTION 11. 111.70 (4) (cm) 7g. of the statutes is repealed.

SECTION 12. 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

111.70 **(4)** (cm) 7r. '~~Other factors~~ Factors considered.' (intro.) In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall ~~also~~ give weight to the following factors:

SECTION 13. 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated, renumbered 111.70 (4) (cm) 8m. and amended to read:

111.70 **(4)** (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, every collective bargaining agreement covering municipal

employees subject to this paragraph ~~other than school district professional employees~~ shall be for a term of 2 years~~. No~~, but in no case may a collective bargaining agreement for any collective bargaining unit consisting of municipal employees ~~subject to this paragraph other than school district professional employees shall~~ be for a term exceeding 3 years. ~~c.~~ No arbitration award may contain a provision for reopening of negotiations during the term of a collective bargaining agreement, unless both parties agree to such a provision. The requirement for agreement by both parties does not apply to a provision for reopening of negotiations with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation.

SECTION 14. 111.70 (4) (cm) 8m. b. of the statutes is repealed.

SECTION 15. 111.70 (4) (cm) 8p. of the statutes is repealed.

SECTION 16. 111.70 (4) (cm) 8s. of the statutes is repealed.

SECTION 17. 111.70 (4) (cn) of the statutes is repealed.

SECTION 18. 111.70 (4) (d) 2. a. of the statutes is amended to read:

111.70 **(4)** (d) 2. a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal ~~work force~~ workforce. In making such a determination, the commission may decide whether, in a particular case, the municipal employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a collective bargaining unit. Before making its determination, the commission may provide an opportunity for the municipal

employees concerned to determine, by secret ballot, whether ~~or not~~ they desire to be established as a separate collective bargaining unit. ~~The commission shall not decide, however, that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both municipal employees who are school district professional employees and municipal employees who are not school district professional employees.~~ The commission shall not decide, however, that any ~~other~~ group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both craft employees and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. The commission shall place the professional employees who are assigned to perform any services at a charter school, as defined in s. 115.001 (1), in a separate collective bargaining unit from a unit that includes any other professional employees whenever at least 30% of those professional employees request an election to be held to determine that issue and a majority of the professional employees at the charter school who cast votes in the election decide to be represented in a separate collective bargaining unit. Upon the expiration of any collective bargaining agreement in force, the commission shall combine into a single collective bargaining unit 2 or more collective bargaining units consisting of school district professional employees, with each collective bargaining unit maintaining its representative, if a majority of the employees voting in each collective bargaining unit vote to combine. Any vote taken under this subsection shall be by secret ballot.

****NOTE: Do you want language permitting the withdrawal of units, upon the expiration of a cba, if the majority of the unit wants to withdraw?

SECTION 19. 111.70 (4) (m) (intro.) of the statutes is amended to read:

111.70 **(4)** (m) *Prohibited subjects of bargaining; school district municipal employers in cities that are not 1st class cities.* (intro.) In a school district that is not in a 1st class city, the municipal employer is prohibited from bargaining collectively with respect to:

SECTION 20. 111.70 (4) (m) 6. of the statutes is renumbered 111.70 (4) (mb) and amended to read:

111.70 **(4)** (mb) *Prohibited subjects of bargaining; school district municipal employers.* ~~Solicitation~~ In a school district, the municipal employer is prohibited from bargaining collectively with respect to the solicitation of sealed bids for the provision of group health care benefits for school district professional employees as provided in s. 120.12 (24).

SECTION 21. 111.70 (4) (n) of the statutes is created to read:

111.70 **(4)** (n) *Mandatory subjects of bargaining; school district municipal employers.* In a school district, the municipal employer shall bargain collectively with respect to a professional or instructional policy if a labor organization demonstrates that the professional or instructional policy is likely to affect the quality of educational programs offered by the municipal employer.

SECTION 22. 118.245 of the statutes is repealed.

SECTION 9316. Initial applicability; Employment Relations Commission.

(1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (a), (b), (dm), (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r., 8m. a., b., and c., 8p.,

and 8s., (cn), (d) 2. a., (m) (intro.) and 6., and (n) of the statutes first applies to petitions for arbitration that relate to collective bargaining agreements that cover periods beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0508/5dn
CMH:...:...
WLJ

Date

Marta:

This /5 version removes the following: the addition of professional or instructional policies as a mandatory subject of collective bargaining for school districts; the elimination as a prohibited subject of collective bargaining for Milwaukee the provisions under s. 111.70 (4) (m) 1., 2., and 4.; and the ability for multiple final offers for school districts or employees.

Cathlene Hanaman
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0508/5dn
CMH:wlj:rs

January 20, 2009

Marta:

This /5 version removes the following: the addition of professional or instructional policies as a mandatory subject of collective bargaining for school districts; the elimination as a prohibited subject of collective bargaining for Milwaukee the provisions under s. 111.70 (4) (m) 1., 2., and 4.; and the ability for multiple final offers for school districts or employees.

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Hanaman, Cathlene

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Wednesday, January 28, 2009 10:34 AM
To: Hanaman, Cathlene
Subject: RE: LRB Draft: 09-0508/5 Repeal QEO

Please make the following changes to the 'Repeal QEO' draft:

1. Instead of repealing all of 111.70(4)(cm)5s, leave the portion that states that for school district employees, non-economic issues applicable to any period on or after 1993, are subject to interest arbitration after the parties have reached an agreement and stipulate to agreement on all economic issues concerning the wages, hours, or conditions of employment of school district employees in the unit for that period.

2. Bring back 111.70(4)(cm)7 and 7g the way they are under current law but specify that they do not apply to school district employees

3. Under 111.70(4)(cm)8m, specify that in no case may a collective bargaining agreement for school district employees be for a term exceeding 4 years.

4. In the new section added at the end of 111.70(4)(d)2.a., make a change that says '2 or more collective bargaining units including school district professional employees,' change 500 employees to 500 full-time equivalent employees, and delete "with each collective bargaining unit maintaining its representative.'

Thanks.

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]
Sent: Tuesday, January 20, 2009 10:56 AM
To: Skwarczek, Marta A - DOA
Cc: Hanle, Bob - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0508/5 Repeal QEO

Following is the PDF version of draft 09-0508/5.